

PROBATE & ESTATE PLANNING SECTION

July 2, 2007

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Approved Court Forms

P.O. Box 30048

Lansing, MI 48909

Re: Probate Forms Committee Meeting

Dear Sir or Madam:

The Probate and Estate Planning Council is proposing a new form and some changes in existing forms for discussion at the Probate Forms Committee Meeting scheduled for September 6, 2007. In general, we are proposing changes in the enclosed forms in order to engender uniformity of practice in the probate courts.

We have enclosed a proposed change to the Letter of Authority (PC 572) to add an instruction to state that the minimum fee for a Letter of Authority is \$12. MCL 600.2546 states that the fee for certified copies is \$10 plus \$1 per page. We have been advised that SCAO's interpretation of this statutory section is that the charge for each letter of authority should be \$12 or more, depending on the number of pages. Courts are charging from \$0 to \$12 for letters of authority. An instruction indicating that the minimum charge should be \$12 may resolve this uniformity of practice issue.

A new form entitled Affidavit of Incumbency is also enclosed. Some courts are requiring this form before an estate can be closed when estate assets are poured over to a trust, even though MCR 5.501(E) provides that a trustee "may" file an affidavit of incumbency when assets from a decedent estate are transferred to a trust. Attorneys are requesting a form to deal with this requirement. We have enclosed a proposed form entitled Affidavit of Incumbency with an instruction that filing the Affidavit of Incumbency is not required by statute or court rule.

Some courts are requiring that the petitioner file the form Testimony Interested Persons (PC 565) before the court will issue an order for a small estate. Pursuant to MCL 700.3982 the court may require additional

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information. Since this requirement of filing the Testimony Interested Persons often takes attorneys by surprise, we propose to add an instruction to PC 556 warning that the court may require that the petitioner file a Testimony Interested Persons be filed along with the Petition and Order for Assignment.

There is often confusion as to what type of guardianship petition to file for a disabled person. If the cause for certain conditions occurs before age 22, a Petition for a Guardianship for a Developmentally Disabled Individual (PC 658) should be filed rather than a Petition for Appointment of Guardian of Incapacitated Individual (PC 625). In order to help the clerks at the counter to flag this issue, we propose adding a line to the Petition for Appointment of Guardian of Incapacitated Person asking about the age that the disability occurred.

The problem of valuing joint property on a conservatorship inventory is still with us. In order to flag joint assets, we propose that a separate column be added to the inventory that the conservator can check if property is held jointly with others. We also propose adding an instruction that joint property should be valued at 100% of its value, with information about the other joint owners provided in the description of the property.

We appreciate the opportunity to make suggestions to the Probate Forms Committee and to submit proposed forms for approval. Please contact Joan Von Handorf at 248-421-0477 if you have any questions or suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas A. Mielock", written in a cursive style.

Douglas A. Mielock
Chair of Probate and
Estate Planning Section

Enclosures

JIS CODE: PAO

STATE OF MICHIGAN PROBATE COURT COUNTY CIRCUIT COURT - FAMILY DIVISION	AFFIDAVIT OF INCUMBENCY	FILE NO.
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In the matter of _____

affidavit

1. I am interested in this matter and make this petition as _____
State interest/relationship

2. _____ is the trustee of the _____ dated _____
Name of trustee Name of trust

☐ 3. _____ died on _____
Name of settlor

4. The name and address of the current trustee is _____.

5. The trust is still in effect.

6. ☐ No bond was required to be filed with the court.

☐ Any required bond has been filed with the court and is in effect.

Signature _____

Name (type or print) _____

Address

City, state, zip

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____

Notary public, State of Michigan, County of _____

NOTICE: A false statement on this affidavit may subject the person swearing to the statement to prosecution for perjury.

Note to Affiant: Filing an affidavit of Incumbency is not required by statute or court rule.